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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

MICHAEL J. BOWERS,
ATTORNEY GENERAL OF GEORGIA,
Petitioner,

v.

MICHAEL HARDWICK AND
JOHN AND MARY DOE,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS	1
ARGUMENT	2
I. The States Have Always Had The Constitutional Power To Criminalize Homosexual Activity	2
The Bill Of Rights	4
The Fourteenth Amendment	12
After 1868	19
CONCLUSION	19
APPENDIX A	1a

TABLE OF AUTHORITIES

Page

CASES:

Baker v. *Wade*, 553 F.Supp. 1121 (N.D. Tex. 1982) 2a
Baker v. *Wade*, 769 F.2d 289 (5th Cir. 1985) 2a
Commonwealth v. *Bonadio*, 490 Pa. 91, 415 A.2d 47 (1980) 4, 2a
Davis v. *State*, 3 Har. & J. 154 (Md. 1810) 6
Doe v. *Commonwealth's Attorney*, 403 F.Supp. 1199 (E.D. Va. 1975) 2a
Dronenburg v. *Zech*, 741 F.2d 1388 (D.C. Cir. 1984) 2
Hardwick v. *Bowers*, 760 F.2d 1202 (11th Cir. 1985) 2
People v. *Onofre*, 51 N.Y.2d 476, 434 N.Y.S.2d 947, 415 N.E.2d 936 (1980) 4, 2a
Roe v. *Wade*, 410 U.S. 113 (1973) 2
State v. *La Forrest*, 71 Vt. 311, 45 A. 225 (1899) 18
State v. *Vicknair*, 52 La. Ann. 1921, 28 So. 273 (1915) .. 15

CONSTITUTIONAL PROVISIONS:

U.S. Constitution
Bill of Rights (1st-10th Amendments) ..... *passim*
Fourteenth Amendment ..... *passim*

Maryland Constitution of 1776
Declaration of Rights, § 3 6

STATUTES:

Alabama,
1852, § 3235 12
13A-6-65 ..... 1a

Arizona,
13-1411 ..... 1a

Arkansas,
1858 Chap. 51, Art. IV, § 5 13
41-1813 ..... 1a

California,
1850, Chap. 99 § 48 13

Connecticut,
1808, Title LXVI, Chap. 1, § 2 5

Table of Authorities Continued

Page

Delaware,
1797, Chap. 22a, § 5 5

District of Columbia,
22-3502 ..... 1a

Florida,
1868, Chap. 1637, Subchap. 8, § 17 13
800.02 ..... 1a

Georgia,
1816, § 35 5-6
16-6-2 ..... 1a

Idaho,
18-6605 ..... 1a

Illinois,
1844, Chap. 30, Div. 5, § 50 13

Indiana,
1897, Chap. 5, art. 5, § 2118 13-14

Iowa,
1897, § 4937 14

Kansas,
1868, Art. 7, Chap. 31, § 249 14
21-3505 ..... 1a

Kentucky,
1852, Chap. 28, Art. IV, § 11 14
510.100 ..... 1a

Louisiana,
1856, "Crimes and Offences," § 5 15
14.89 ..... 1a

Maine,
1857, Chap. 124, § 3 15

Maryland,
1793, Chap. LVII, § 10 6
1809, Chap. CXXXVIII, art. IV, § 8 6
27-553 ..... 1a

Table of Authorities Continued

	Page
27-554	1a
Massachusetts,	
1785, Act of March 3, 1785	7
272-34	1a
Michigan,	
1857, § 5871	15
750.158	1a
Minnesota,	
1858, Chap. 96, § 13	15-16
609.293	1a
Mississippi,	
857, Chap. 64, art. 238, § 52	16
97-29-59	1a
Missouri,	
1855, Chap. 50, § 7	16
566.090	1a
Montana,	
45-5-505	1a
Nebraska,	
1866, § 47	16-17
1881, § 245	16
Nevada,	
1861, § 4699, Sec. 45	17
201.190	1a
New Hampshire,	
1805, Laws of New Hampshire, p. 267	7
New Jersey,	
1796, Chap. DC, § 7	7-8
New York,	
1787, Chap. 21	8
Penal Code 130.38	2a
North Carolina,	
1837, Chap. 34 § 6	8-9

Table of Authorities Continued

	Page
14-177	2a
Ohio,	
Laws 1885, Act of May 4, 1885	17
Oklahoma,	
21-886	2a
Oregon,	
1864, Chap. 48, § 639	17-18
Pennsylvania,	
1790, Chap. MDXVI	9
18-3124	2a
Rhode Island,	
1798, 8, "An Act to Reform the Penal laws,"	10
11-10-1	2a
South Carolina,	
1790, "The Punishment of the Vice of Buggery,"	10-11
1790, "An Act of the Punishment of the Vice of Buggery,"	11
16-15-120	2a
Tennessee,	
1858, § 4843	18
39-2-612	2a
Texas,	
Penal Code of 1879, art. 342	18
Penal Code 21.06	2a
Utah,	
76-5-403	2a
Vermont,	
1947, Chap. 370, § 8480	18
Virginia,	
1776, Chap. V, § VI	11
1835, Chap. 38,	12
18.2-361	2a
West Virginia,	
1870, Chap. 149, § 12	19
Wisconsin,	
1858, Chap. 170, § 15	19

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BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS IN THIS CASE

Concerned Women for America is a national, non-profit membership organization with approximately 500,000 members. At its annual convention held in Washington, D.C., on September 14-15, 1984, it adopted the following resolution:

> We oppose any laws designed to grant special legal protection to those who engage in homosexuality. Such laws are an affront to public morality and our dedication to family life.

Concerned Women for America supports the position of the petitioner, the Attorney General of Georgia. The petitioner argues that states have the constitutional power to outlaw homosexual activity. Homosexual activity is not protected under the Constitution. Concerned Women for America urges this Court to reverse the Eleventh Circuit Court of Appeals decision in *Hardwick* v. *Bowers*, 760 F.2d 1202 (11th Cir. 1985).

I.

The States Have Always Had The Constitutional Power To Criminalize Homosexual Activity

Historically, states have exercised with little challenge the constitutional power to regulate and outlaw sodomy. State legislatures throughout the centuries of American history have criminalized homosexual activity, with little or no question (until recent times) that criminal sodomy laws violated the Constitution. The Framers of the Constitution and its amendments did not intend to eliminate the states' power to regulate homosexuality, "a form of behavior never before protected, and indeed, traditionally condemned," by American society, *Dronenburg* v. *Zech*, 741 F.2d 1388, 1396, (D.C. Cir. 1984).

Homosexuals argue that the constitutional right of privacy cloaks their actions with a zone of privacy, shielding them from state regulation. Therefore, the homosexuals claim, the state cannot outlaw sodomy. This right of privacy argument has no historical merit or foundation in the Constitution.

The right of privacy anchors at an elusive harbor in the Constitution. This Court has said that several parts of the Constitution suggest a right of privacy, the First, Third, Fourth, Fifth, and Ninth Amendments, the penumbras of the Bill of Rights, and the concept of liberty guaranteed by the Fourteenth Amendment, *Roe* v. *Wade*, 410 U.S. 113, 152 (1973).

Whatever the limits of the right of privacy, historically, no part of the Constitution grants a "right to sodomy." States have passed criminal sodomy laws before and after ratification of the Bill of Rights, the Fourteenth Amendment and, indeed, every portion of the Constitution.

The historical case in favor of state criminal sodomy laws is overwhelming. All of the 13 original states had criminal sodomy laws, most of them punishing sodomy with death.[1] (Some of these states used the English term, "buggery" in their laws, rather than "sodomy"). None of these states repealed their criminal sodomy laws after passage of the Bill of Rights in 1791, and none of their state courts at that time declared their laws unconstitutional on a right of privacy basis.

The new states that entered the Union during the early and mid-1800's routinely passed criminal sodomy laws.[2] No court at that time declared these laws unconstitutional.

At the time of ratification of the Fourteenth Amendment in 1868, all but 5 of the 37 states in the Union had criminal sodomy laws. The five states that did not, Indiana, Iowa, Nebraska, Ohio and Vermont, all later

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[1] See text of state laws following in this brief.

[2] Id.

approved criminal sodomy laws.[3] No state legislature at that time repealed its sodomy law due to the Fourteenth Amendment, or had a state court declare it unconstitutional on a right of privacy basis.

Every state that entered the union after 1868 passed a criminal sodomy law. For most of American history, all states have had criminal sodomy laws.[4] The first state to repeal its criminal sodomy law occurred in 1962.[5] No state supreme court declared a criminal sodomy statute unconstitutional on a right of privacy basis until 1980,[6] which is almost 200 years after ratification of the Bill of Rights and 112 years after ratification of the 14th Amendment.

Until very recently, no court has seriously entertained the notion that criminal sodomy laws are unconstitutional. States have passed (or repealed) their criminal sodomy laws as they saw fit. Indeed, no historical evidence exists that the Framers of the Bill of Rights, the Fourteenth Amendment or any other portion of the Constitution intended to eliminate the states' power to regulate homosexual activity.

Bill Of Rights

We submit the texts of the criminal sodomy laws that were in effect in 1791, at the time the ten amendments in

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[3] Id.

[4] See following text of this brief, and *The Rights of Gay People*, American Civil Liberties Union, Boggan, Haft, Lister, Rupp and Stoddard, 1983, Bantam Books, pp. 131-166.

[5] 1961 Illinois Laws, p. 1983, § 11-2 (effective Jan. 1, 1962). Since that time, other states have repealed their criminal sodomy laws. At present, 25 states and the District of Columbia still retain criminal sodomy laws. See Appendix A for that list of states.

[6] See *People* v. *Onofre*, 51 N.Y.2d 476, 434 N.Y.S.2d 947, 415 N.E.2d 936 (1980) and *Commonwealth* v. *Bonadio*, 490 Pa. 91, 415 A.2d 47 (1980).

the Bill of Rights were ratified, to enable the Court to ascertain the law as of that date.

Connecticut

The Public Statute Laws of the State of Connecticut, 1808 title LXVI (66), Chap. 1, § 2, p. 295 (this law was passed as a "capital law" by the General Court of Connecticut on Dec. 1, 1642, and was still in effect up to 1808):

> That if any man shall lie with mankind, as he lieth with womankind, both of them have committed abomination, they both shall be put to death; except it shall appear that one of the parties was forced, or under fifteen years of age; in which case the party forced, or under the age aforesaid, shall not be liable to suffer the said punishment.

Delaware

Laws of the State of Delaware, 1797, Chap. 22a, § 5, p. 67 (passed in 1719):

> That if any person or persons shall commit sodomy, or buggery, or rape or robbery, . . . he or they so offending, or committing any of the said crimes within this government, their counsellors, aiders, comforters and abettors, being convicted thereof, as above-said, shall suffer as felons, according to the tenor, direction, form and effect of the several statutes in such cases respectively made and provided in Great Britain; any act or law of this government to the contrary in any wise notwithstanding.

(Sodomy was punished by death under English law. See section on North Carolina).

Georgia

Georgia had no criminal sodomy statute until 1816, but sodomy was a crime at common law at the time the states

ratified the Bill of Rights. The Georgia Legislature in 1784 adopted the common law of England as the law of Georgia. The first Georgia sodomy statute passed in 1816, Lamar's of Georgia, 1810-1819, § 35, p. 571, read as follows:

> Sodomy and bestiality shall be punished by hard labour in the penitentiary, during the natural life or lives of person or persons convicted of these detestable crimes.

Maryland

Maryland had no criminal sodomy statute in 1791, but sodomy was a criminal offense at common law. The Declaration of Rights of Maryland, section 3, a portion of the Maryland State Constitution passed in 1776, said "that the inhabitants of Maryland are entitled to the common law of England. . . ." Sodomy was a crime at common law (see section on North Carolina).

In 1793, the Maryland Legislature passed a law allowing justices to pass judgment on free male persons, male servants or apprentices. The list of crimes includes sodomy, and refers to it as a common law offense, Maryland Laws, Thomas Sim Lee, Esq., Governor, Chap. LVII (57), Article 10. See also *Davis* v. *State*, 3 Har. & J. 154 (Md. 1810).

In 1809, the Maryland Legislature passed the following law outlawing sodomy, Maryland Laws, Chap. CXXXVIII (138), art. IV, § 8:

> Every person duly convicted of the crime of sodomy, shall be sentenced to undergo a similar confinement for a period not less than one year nor more than ten years, under the same conditions as are herein after directed.

Massachusetts

Perpetual Laws of the Commonwealth of Massachusetts, 1780-1789, p. 187, Act of March 3, 1785:

> That if any man shall lay with mankind as he layeth with a woman, or any man or woman shall have carnal copulation with any beast or brute creature, and be thereof duly convicted, the offender, in either of those cases, shall be adjudged guilty of felony, shall be sentenced to suffer the pains of death, and the beast shall be slain, and every part thereof burned. And be it further enacted by the authority aforesaid, that such order and form of process shall be had and used, in trial of such offenders, and such judgment given, and execution done, upon the offender, as in cases of murder.

New Hampshire

Laws of New Hampshire, 1805, p. 267 (The state enacted this criminal sodomy law February 8, 1791):

> That if any man shall carnally lie with a man, as a man carnally lieth with a woman, or if any man or woman shall have carnal copulation with any beast, or brute creature, and be thereof convicted, the offender in either of those cases before mentioned, shall suffer death, and the beast shall be slain and burned.

New Jersey

Sodomy was a crime at common law in New Jersey at the time the Bill of Rights were ratified. Five years later, New Jersey passed the following law:

Acts of the General Assembly, March 18, 1796, Chap. DC, § 7, p. 93:

> That sodomy, or the infamous crime against nature, committed with mankind or beast, shall be adjudged a high crime and misdemeanor, and be punished by

fine and solitary imprisonment at hard labour, for any term not exceeding twenty-one years.

New York

Laws of New York, Chap. 21, p. 391 (Passed February 14, 1787):

> That the detestable and abominable vice of buggery, committed with mankind, or beast, shall be from henceforth adjudged felony; and such order and form of process therein shall be used against the offenders, as in cases of felony at the common law; and that every person being thereof convicted, by verdict, confession, or outlawry, shall be hanged by the neck, until he or she shall be dead.

North Carolina

At the time of ratification of the Bill of Rights, North Carolina adopted the English statute of Henry VIII outlawing sodomy, 25 Henry VIII, chap. 6. This law was the basis of the English common law crime of "buggery" (sodomy):

> Forasmuch as there is not yet sufficient and condign punishment appointed and limited by the due course of the Laws of this Realm, for the detestable and abominable vice of Buggery committed with mankind or beast: It may therefore please the King's Highness, with the assent of his Lords spiritual and temporal, and the Commons of this present Parliament assembled . . . That the same offense be from henceforth adjudged Felony . . . And that the offenders being hereof convict . . . shall suffer such pains of death and losses and penalties of their goods, chattels, debts, lands, tenements and hereditaments, as Felons be accustomed to doe [sic] according to the order of the Common-laws of this Realm. And that no person offending in any such offense, shall be admitted to his Clergy, And that Justices of Peace shall

> have power and authority, within the limits of their Commissions and Jurisdictions, to hear and determine the said offense, as they do use to doe [sic] in cases of other Felonies . . .

In 1837, the North Carolina Legislature passed a criminal sodomy statute, North Carolina Revised Code, Chap. 34, § 6 (1837):

> Any person who shall commit the abominable and detestable crime against nature, not be named among Christians, with either mankind or beast, shall be adjudged guilty of a felony, and shall suffer death without the benefit of clergy.

Pennsylvania

The Statutes at Large of Pennsylvania, 1682-1801, vol. 13, (1682-1801), p. 511, Chap. MDXVI (1516), passed April 5, 1790:

> . . . That the pains and penalties hereinafter mentioned shall be inflicted upon the several offenders who shall from and after the passing of this act commit and be legally convicted of any of the offences hereinafter enumerated and specified, in lieu of the pains and penalties which by law have been heretofore inflicted; that is to say, every person convicted of robbery, burglary, *sodomy or buggery* or as accessory thereto before the fact shall forfeit to the commonwealth all and singular the lands and tenements, goods and chattels whereof he or she was seized or possessed at the time the crime was committed and at any time afterwards until conviction and be sentenced to undergo a servitude of any term or time at the discretion of the court passing the sentence not exceeding ten years in the public gaol or house of correction of the county or city in which the offense shall have been committed and be kept at such labor and fed and clothed in such manner as is herein after directed. [Emphasis added].

Rhode Island

The Public Laws of the State of Rhode Island and Providence Plantations, 1798, § 8, p. 586, "An Act to Reform the Penal Laws,"

> That every person who shall be convicted of sodomy, or of being accessary [sic] thereto before the fact, shall, for the first offence, [sic] be carried to the gallows in a cart, and set upon said gallows, for a space of time not exceeding four hours, and thence to the common gaol, there to be confined for a term not exceeding three years, and shall be grieviously fined at the direction of the Court; and for the second offence [sic] shall suffer death.

South Carolina

Public Laws of the State of South Carolina, 1790, p. 49:

The Punishment of the Vice of Buggery

> Forasmuch as there is not yet sufficient and condign [sic] Punishment appointed and limited by the due Course of the Laws of this Realm, for the detestable and abominable Vice of Buggery committed with Mankind or Beast: (2) It may therefore be enacted, That the same offence be from henceforth adjudged Felony, and such Order and Form of Process therein to be used against the Offenders as in Cases of Felony at the Common Law; (3) and that the Offenders being hereof convict [sic] by Verdict, Confession, or Outlawry, shall suffer such Pains of Death, and Losses and Penalties of their Goods, Chattels, Debts, Lands, Tenements and Hereditaments, as Felons be accustomed to do, according to the Order of the Common Laws of this Realm; (4) and that no Person offending in any such Offence, shall be admitted to his Clergy; (5) and that Justices of Peace shall have Power and Authority, within the Limits of their Commissions and Jurisdictions, to hear and determine

the said Offence, as they do use to do in Case of other Felonies.

Id. page 65:

An Act for the Punishment of the Vice of Buggery

Where in the Parliament begun at London the 3d Day of November in the 21st Year of the late King of most famous Memory, King Henry the Eighth, and after by Prorogation holden at Westminster in the 25th Year of the Reign of said late King, there was one Act and Statute made, entitled, An Act for the Punishment of the Vice of Buggery, whereby the said detestable Vice was made Felony, as in the said Estatute [sic] more and large it doth and may appear: (2) Forasmuch as the said Statute concerning the Punishment of said Crime and Offence of Buggery standeth at this present repealed and void by Virtue of the Statute of Repeal made in the 1st Year of the Reign of the late Queen Mary: Sithence which Repeal so had and made divers evil disposed Persons have been the more bold to commit the said most horrible and detestable Vice of Buggery aforesaid, to the high Displeasure of Almighty God

II. Be it enacted, That the said Statute before mentioned, made in the 25th Year of the said late King Henry the 8th, for the Punishment of the said detestable Vice of Buggery, and every Branch, Clause, Article and Sentence therein contained, shall from and after the 1st Day of June next coming be revived, and from thenceforce shall stand, remain, and be in full Force, Strength and Effect for every, in such Manner, Form and Condition, as the same Statute was at the Day of the Death of the said late King Henry the Eighth, the said Statute of Repeal made in the said 1st Year of the said late Queen Mary or any Words general or special therein contained, or any other Act or Acts, Thing or Things, to the contrary notwithstanding.

Virginia

Virginia passed a criminal sodomy statute in 1792, shortly after the ratification of the Bill of Rights. Before that time, Virginia had adopted the English common law, which made sodomy a crime punishable by death (see Hennings Statutes of Virginia, vol. 9, 1775-1778, Chap. V, § VI, p. 127, passed May 1776). The Virginia criminal sodomy statute passed in 1792 appears at Virginia Statutes at Large, 1835, p. 113 (Chap. 38, passed December 10, 1792):

> (1) That if any do commit the detestable and abominable vice of buggery, with man or beast, he or she so offending, shall be adjudged a felon, and shall suffer death, as in case of felony, without the benefit of clergy.
>
> (2) This act shall commence in force from and after the passing thereof.

Fourteenth Amendment

We submit to this Court the texts of the criminal sodomy laws in effect in 1868, the year the Fourteenth Amendment was ratified. The 13 original states all retained their criminal sodomy laws, with some alterations in language. Here are the texts of laws in effect in the states that had entered the union between 1791 and 1868:

Alabama

Alabama Code, 1852, § 3235, p. 583:

> Crimes against nature, either with mankind or any beast, are punishable by imprisonment in the penitentiary not less than two or more than ten years.

Arkansas

Statutes of Arkansas, 1858, chapter 51, Art. IV, § 5, p. 335: (passed in 1838):

> Every person convicted of sodomy, or buggery, shall be imprisoned in said jail and penitentiary house, for a period not less than five, nor more than 21 years.

California

Statutes 1850, Chap. 99, § 48, p. 99:

> The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the State Prison for a term not less than five years, and which may extend to life.

Florida

Florida Laws 1868, Chap. 1637, Subchap. 8, § 17, p. 98:

> Whoever commits the abominable and detestable crime against nature, either with mankind or with any beast, shall be punished by imprisonment in the State penitentiary not exceeding twenty years.

Illinois

Revised Statutes of 1844-45, Chap. 30, Div. 5, § 50, p. 158:

> The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may extend to life.

Indiana

Indiana did not have a criminal sodomy law at the time of passage of the 14th Amendment, but passed the following law in 1881 (Revised Statutes of Indiana—1897, Chap. 5, art. 5, § 2118, p. 338):

> Whoever commits the abominable and detestable crime against nature, by having carnal knowledge of a man or beast; or who, being a male, carnally knows any man or any woman through the anus; and whoever entices, allures, instigates, or aids any person under the age of twenty-one years to commit masturbation or self-pollution—is guilty of sodomy, and, upon conviction thereof, shall be imprisoned in the State prison not more than fourteen years nor less than two years.

Iowa

Iowa did not have a criminal sodomy law at the time of passage of the 14th Amendment, but later passed the following law in 1892, (Annotated Code of Iowa, 1897, § 4937, p. 1941, passed 24 General Assembly, Chap. 39):

> Any person who shall commit sodomy, shall be imprisoned in the penitentiary not more than ten years nor less then one year.

Kansas

Art. 7, Chap. 31, § 249, General Statutes of 1868 (found at vol. 2, p. 340, Statutes of Kansas, 1897):

> Every person who shall be convicted of the detestable and abominable crime against nature, committed with mankind or with beast, shall be punished by confinement and hard labor not exceeding ten years.

Kentucky

Revised Statutes of 1852, Chap. 28, Art. IV, § 11, p. 381:

> Whoever shall be convicted of the crime of sodomy or buggery with man or beast, he shall be confined in the penitentiary not less than two nor more than five years.

Louisiana

Revised Statutes of Louisiana, 1856, "Crimes and Offences," § 5, p. 136:

> Whoever shall be convicted of the detestable and abominable crime against nature, committed with mankind or beast, shall suffer imprisonment at hard labor for life.

See also *State* v. *Vicknair*, 52 La. Ann. 1921, 28 So. 273 (1900).

Maine

Revised Statutes of 1857, Chap. 124, § 3, p. 684:

> Whoever commits the crime against nature, with mankind or with a beast, shall be punished by imprisonment not less than one, nor more than ten years.

Michigan

Compiled Laws of 1857, § 5871, p. 1543:

> Every person who shall commit the abominable and detestable crime against nature, either with mankind or with any beast, shall be punished by imprisonment in the State prison not more than fifteen years.

Minnesota

Minnesota Statutes 1858, Chap. 96 § 13, p. 729:

> Every person who shall commit sodomy, or the crime against nature, either with mankind or any beast, shall be punished by imprisonment in the territorial [sic] prison, not more than five years, nor less than one year.

(Apparently, the Minnesota State Legislature repassed the criminal laws of the Minnesota Territory, and did not notice that the criminal sodomy statute made reference to the "territorial prison," when it should have referred to the "state prison." See Revised Statutes of the Territory of Minnesota, Chap. 107, § 13, p. 520).

Mississippi

Laws of 1857, Chap. 64, art. 238, § 52, p. 611:

> Every person who shall be convicted of the detestable and abominable crime against nature, committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term not more than ten years.

Missouri

Revised Statutes 1855, Chap. 50, § 7, p. 624:

> Every person who shall be convicted of the detestable and abominable crime against nature, committed with mankind or with beast, shall be punished by imprisonment in the penitentiary not less than ten years.

Nebraska

Nebraska had a criminal sodomy law while it was a territory, but not for a few years after it became a state. The Statutes of the Nebraska Territory of 1866 had a criminal sodomy statute at § 47, "Offenses Against Persons," p. 599. Nebraska had no criminal sodomy law at the time the states ratified the Fourteenth Amendment in 1868. The Nebraska State Legislature later passed such a law in 1875, using the exact language of the earlier territorial sodomy law. Compiled Statutes, 1881, § 245, p. 805, reads as follows:

> That the infamous crime against nature either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and my [sic, "may"] extend to life.

Nevada

The Compiled Laws of Nevada in Force from 1861-1900, § 4699, sec. 45, p. 915 (the law was approved November 26, 1861):

> The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the state prison for a term not less than five years and which may extend to life.

Ohio

Ohio did not have a criminal sodomy law in 1868, at the time of ratification of the Fourteenth Amendment. The Ohio Legislature later passed a criminal sodomy statute in 1885, Ohio Laws 1885, p. 241 (passed May 4, 1885):

> Sec. 1 That whoever shall have carnal copulation against nature, with another human being or with a beast, shall be deemed guilty of sodomy, and shall, on conviction thereof, be imprisoned in the penitentiary not more than twenty years.
>
> Sec. 2 This act shall take effect and be in force from and after its passage.

Oregon

Oregon Organic and General Laws, 1845-64, Chap. 48, § 639, p. 560, (passed October 19, 1864):

> If any person shall commit sodomy or the crime against nature, either with mankind or beast, such person, upon conviction thereof, shall be punished by

imprisonment in the penitentiary not less than one year, nor more than five years.

Tennessee

Code of Tennessee, 1858, § 4843, p. 868:

> Crimes against nature, either with mankind or any beast, are punishable by imprisonment in the penitentiary not less than five nor more than fifteen years.

Texas

Penal Code of the State of Texas, 1879, art. 342, p. 46 (passed on February 11, 1860):

> If any person shall commit with mankind or beast the abominable and detestable crime against nature, he shall be deemed guilty of sodomy, and on conviction thereof, he shall be punished by confinement in the penitentiary for not less than five nor more than fifteen years.

Vermont

Vermont had no criminal sodomy statute until 1937, although Vermont courts recognized sodomy as a crime at common law, which could be punished. See *State* v. *La Forrest*, 71 Vt. 311, 45 A. 225 (1899).

This is the text of the Vermont criminal sodomy statute passed in 1937, (Vermont Statutes of 1947, Chap. 370, § 8480, p. 1593):

> A person participating in the act of copulating the mouth of one person with the sexual organ of another shall be imprisoned in the state prison not less than one year nor more than five years.

West Virginia

Code of West Virginia—1870, Chap. 149, § 12, p. 694, passed in 1868:

> If any person shall commit the crime of buggery, either with mankind or with any brute animal, he shall be confined in the penitentiary not less than one nor more than five years.

Wisconsin

Revised Statutes of Wisconsin, 1858, Chap. 170, § 15, p. 975:

> Every person who shall commit sodomy, or the crime against nature, either with mankind or beast, shall be punished by imprisonment in the state prison, not more than five years nor less than one year.

After 1868

After 1868, 13 more states entered the union. All of them passed criminal sodomy laws.[7] The states are Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Washington and Wyoming. None of these states viewed the Bill of Rights or the Fourteenth Amendment as a restriction on their power to outlaw sodomy. None of the courts in these states declared their criminal sodomy laws unconstitutional.

CONCLUSION

The unanimous verdict of American history is that state legislatures have the constitutional power to criminalize sodomy. No historical evidence exists that the Framers of the Bill of Rights or the Fourteenth Amendment or any

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[7] op. cit., *ACLU*. See footnote 4.

other portion of the Constitution intended to protect homosexual behavior. The clear understanding and practice of the states for the whole of American history is that state legislatures have the constitutional power to regulate homosexuality as they see fit. No "right to sodomy" lurks in the texts or penumbras of the Constitution. The clear message of American legal history is that state-criminal sodomy laws are constitutional. The Eleventh Circuit should be reversed and the Georgia sodomy law upheld.[8]

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Respectfully submitted,

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[8] Our thanks to Kenneth Clark of McLean, Virginia, a law student at Catholic University in Washington, D.C., for his help on this brief.

APPENDIX

APPENDIX A

CURRENT CRIMINAL SODOMY LAWS

State	Statutory References	Classification
Alabama	13A-6-65	Class A Misd.
Arizona	13-1411	Class 3 Misd.
Arkansas	41-1813	Class A Misd.
District of Columbia	22-3502	Felony
Florida	800.02	2nd Degree Misd.
Georgia	16-6-2	Felony
Idaho	18-6605	Felony
Kansas	21-3505	Class B. Misd.
Kentucky	510.100	Class A Misd.
Louisiana	14.89	Felony
Maryland	27-553	Felony
	27-554	Felony
Massachusetts	272-34	Felony
Michigan	750.158	Felony
Minnesota	609.293	Misd.
Mississippi	97-29-59	Felony
Missouri	566.090	Class A Misd.
Montana	45-5-505	Misd.
Nevada	201.190	Felony
New York[1]	130.38	Class B Misd.

[1] Although the New York criminal sodomy law is still listed in the statute books, it was declared unconstitutional by the highest state court in New York in 1980, and the U.S. Supreme Court declined to review the case, *People* v. *Onofre*, 51 N.Y.2d 476, 434 N.Y.S.2d 447, 415 N.E.2d 936 (1980), cert. denied 451 U.S. 987 (1981).

North Carolina	14-177	Class H Felony
Oklahoma	21-886	Felony
Pennsylvania[2]	18-3124	Misd. 2nd Degree
Rhode Island	11-10-1	Felony
South Carolina	16-15-120	Felony
Tennessee	39-2-612	Felony
Texas[3]	21.06	Felony
Utah	76-5-403	Class B Misd.
Virginia[4]	18.2-361	Class 6 Felony

Source: *Are "Gay Rights" Right? A Report on Homosexuality and the Law*, p. 89-90, by Roger Magnuson, Esq., for the Berean League of Minnesota, 2875 Snelling Ave. North, St. Paul, Minn. 55113, (612) 633-0654. This chart appears as Appendix C in the Berean League report, and was compiled by Jordan Lorence.

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[2] Although the Pennsylvania criminal sodomy statute is still listed in the statute books, it was declared unconstitutional by the Pennsylvania Supreme Court in 1980, *Commonwealth* v. *Bonadio*, 490 Pa. 91, 415 A.2d 47 (1980).

[3] The Texas criminal sodomy law was declared unconstitutional by a federal district court in 1982, *Baker* v. *Wade*, 553 F.Supp. 1121 (N.D. Tex. 1982). But this decision was later overturned by the 5th Circuit Court of Appeals sitting en banc. The 5th Circuit affirmed the constitutionality of the Texas criminal sodomy statute, *Baker* v. *Wade*, 769 F.2d 289 (5th Cir. 1985).

[4] The Supreme Court summarily affirmed a lower federal court that upheld the constitutionality of the Virginia criminal sodomy statute, *Doe* v. *Commonwealth's Attorney*, 403 F.Supp. 1199 (E.D. Va. 1975), affirmed 425 U.S. 901 (1976).